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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BENNETT HASELTON, *et al.*,

10 Plaintiffs,

11 v.

12 QUICKEN LOANS, INC., *et al.*,

13 Defendants.

Case No. C07-1777RSL

ORDER GRANTING MOTION
FOR CERTIFICATION OF
INTERLOCUTORY APPEAL
AND STAYING CASE

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15 This matter comes before the Court on defendant's motion requesting that the
16 Court certify its October 14, 2008 order (the "Order") for an interlocutory appeal
17 pursuant to 28 U.S.C. § 1292(b). The Order granted plaintiff's motion for partial
18 summary judgment and found that plaintiffs have standing to pursue a claim under the
19 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003
20 ("CAN-SPAM"), 15 U.S.C. § 7701 *et seq.*

21 The statute provides:

22 When a district judge, in making in a civil action an order not otherwise
23 appealable under this section, shall be of the opinion that such order involves a
24 controlling question of law as to which there is substantial ground for difference of
25 opinion and that an immediate appeal from the order may materially advance the
26 ultimate termination of the litigation, he shall so state in writing in such order. The
Court of Appeals which would have jurisdiction of an appeal of such action may

1 thereupon, in its discretion, permit an appeal to be taken from such order, if
2 application is made to it within ten days after the entry of the order: *Provided,*
3 *however,* That application for an appeal hereunder shall not stay proceedings in the
4 district court unless the district judge or the Court of Appeals or a judge thereof
5 shall so order.

6 28 U.S.C. § 1292(b). Pursuant to the statute, the Court must determine whether the
7 following certification requirements are met: “(1) that there be a controlling question of
8 law, (2) that there be substantial grounds for difference of opinion, and (3) that an
9 immediate appeal may materially advance the ultimate termination of the litigation.” In
10 re Cement Antitrust Litig., 673 F.2d 1020, 1026 (9th Cir. 1982). The statute does not
11 negate “the basic policy of postponing appellate review until after the entry of a final
12 judgment.” Coopers & Lybrand, 437 U.S. 463, 475 (1978).

13 In this case, there is a controlling issue of law: the legal standard for determining
14 whether an entity is an Internet Access Service (“IAS”) and has standing to pursue a
15 claim under the CAN-SPAM Act. Whether plaintiffs have standing to bring this action is
16 a key threshold issue. If the Ninth Circuit were to determine that plaintiffs lacked
17 standing, then protracted and costly litigation would be avoided. Therefore, resolution of
18 the appeal would materially affect the outcome of this litigation.

19 Moreover, there is substantial grounds for difference of opinion. The case law
20 under the CAN-SPAM Act is scant. The Ninth Circuit has not yet opined regarding the
21 requirements to demonstrate standing as an IAS. There are very few published cases
22 addressing the issue of whether an entity has been “adversely affected” by a violation of
23 the Act in a way that confers standing. Guidance from the Ninth Circuit would materially
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1 advance the litigation by clarifying the standards. Furthermore, if the Ninth Circuit
2 determines that plaintiffs lack standing, the litigation will conclude. Accordingly, the
3 Court GRANTS defendant's motion (Dkt. #31) and certifies the Order for an
4 interlocutory appeal pursuant to 28 U.S.C. § 1292(b).
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6 Defendant has requested a stay pending the Ninth Circuit's resolution of three
7 other cases currently before it that address standing under the CAN-SPAM Act.¹ The
8 Court has broad discretion to decide whether a stay is appropriate to "promote economy
9 of time and effort for itself, for counsel, and for litigants." Filtrol Corp. v. Kelleher, 467
10 F.2d 242, 244 (9th Cir. 1972) (internal citations and quotation omitted). The Court will
11 not require plaintiffs in this case to postpone adjudication of their claims until after the
12 Ninth Circuit resolves the claims of others. The delay in awaiting those three decisions
13 could be protracted. Moreover, it is not clear that resolution of those cases will impact
14 the resolution of this case because the Order was consistent with those cases.
15 Furthermore, the facts in those cases are readily distinguishable. For these reasons, the
16 Court will not stay this case pending resolution of unrelated cases.
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19 The Court also considers whether to stay this case pending resolution of the appeal
20 of the Order. Doing so would promote judicial economy. There is little point in
21 adjudicating the remainder of the case if the Ninth Circuit ultimately concludes that
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23 ¹ The three other cases are (1) *Gordon v. Virtumundo, Inc.*, 2007 WL 1459395
24 (W.D. Wash. 2007); (2) *Ferguson v. Quinstreet, Inc.*, 2008 WL 3166307 (W.D. Wash.
25 2008); and *Asis Internet Services v. Optin Global, Inc.*, 2008 WL 1902217 (N.D. Cal.
26 2008).

1 plaintiffs lack standing. Similarly, the parties should not have to waste resources
2 litigating issues that may become moot. Also, a stay would not cause a hardship to
3 plaintiffs, who are seeking only monetary relief. Accordingly, this case is STAYED
4 pending appeal to the Ninth Circuit. The Clerk of the Court is directed to remove the
5 case from the Court's active caseload. The parties must file a joint status report within
6 ten days if the Ninth Circuit declines to hear the appeal or defendant fails to petition for
7 the appeal, or within ten days after the Ninth Circuit issues its decision in this case.
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10 DATED this 11th day of December, 2008.

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14 Robert S. Lasnik
15 United States District Judge
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